COURT MARTIAL

Citation: *R. v. Christmas*, 2025 CM 7007

Date: 20250820
Docket: 202424

Standing Court Martial

Victoria Park Armouries
Sydney, Nova Scotia, Canada

Between:

His Majesty the King

- and -

Corporal K.L. Christmas, Offender

Before: Colonel S.S Strickey, M.J.

Restriction on publication: Pursuant to paragraph 183.5(1)(b) of the *National Defence Act*, the Court directs that any information that could disclose the identity of the person described in these proceedings as the complainant, including the person referred to in the charge sheet as "A.H.", shall not be published in any document or broadcast or transmitted in any way.

REASONS FOR SENTENCE

(Orally)

Introduction

[1] At a Standing Court Martial (SCM), Corporal (Cpl) Christmas was found guilty of one charge of drunkenness contrary to section 97 of the *National Defence Act* (*NDA*) related to an incident on or about 17 March 2019, when she attended a Heavy Machine Gun (HMG) course in Truro, Nova Scotia.

[2] The prosecution and defence disagree as to the sentence that should be imposed. It is now the Court's duty to impose an appropriate and fair sentence, based on the evidence, precedents and arguments submitted by counsel for both parties.

Circumstances surrounding the offence

[3] The facts surrounding the offence before the Court were set out fully in the finding delivered orally on 17 June 2025. For the purposes of this sentencing hearing, the Court will set out the salient facts briefly as follows.

[4] Cpl Christmas is a member of the Cape Breton Highlanders (CB Highrs). She was in Truro, Nova Scotia on or about the 16th and 17th of March 2019 as she was a candidate on the Heavy Machine Gun (HMG) course, taking place at the armouries in Truro, Nova Scotia. A.H was a candidate on the course, as was Private (Pte) (now Sailor 1st Class (S1)) Ashford and Master Corporal (MCpl) (now S1) Matthews. Master Warrant Officer (MWO) Samson was the course warrant officer. Candidates were sleeping at the Truro armouries in two modified classrooms on cots.

[5] On 16 March 2019, Cpl Christmas attended a local bar, the Engine Room, with other candidates. Cpl Christmas was drinking alcohol at the Engine Room and spoke with MCpl Matthews. In the early morning hours of 17 March 2019, A.H. was awoken by Cpl Christmas, who had the odour of rubbing alcohol, slurred speech, was belligerent to him and had difficulty maintaining her balance to the degree that A.H. was required to assist her back to the classroom where they believed Cpl Christmas was sleeping. When back in the classroom, Cpl Christmas woke Pte Ashford, began undressing and got into his cot. Pte Ashford was forced to take his sleeping bag and sleep in another area in the armouries.

[6] The following morning, MWO Samson went to see Cpl Christmas, who had red eyes, was confused, moving slowly and had alcohol on her breath. Cpl Christmas continued the course until approximately 19 March 2019, whereby she was subject to a Performance Review Board (PRB) and was ordered to Return to her Unit (RTU).

Position of the parties

Prosecution

[7] In summary, the prosecution submits that Cpl Christmas should be sentenced to a punishment of a fine in the amount of $2,500 and seven days extra work and drill as it is the punishment most likely to contribute to the maintenance of discipline, efficiency and morale in the Canadian Armed Forces (CAF), in the circumstances of this case and for this offender, especially given the intent underlying the conduct and the harm caused to the victim.

[8] The prosecution argued that aggravating factors should include consideration that Cpl Christmas was attending a weapons course and that her conduct was disruptive

in invading the personal space of course mates. The age of A.H. (seventeen) at the time of the offence should also be considered. While there were no victim impact statements or a military impact statement submitted to the Court, the impact of Cpl Christmas' behaviour was obvious and disruptive to candidates on the course. Her conduct is at the higher end of the spectrum for disorderly behaviour. Regarding mitigating factors, the prosecution acknowledged that Cpl Christmas has no conduct sheet.

[9] From the prosecution's perspective, the objective gravity of this offence is serious. Citing Pelletier, M.J. at paragraph 25 in *R. v. Ermine*, 2021 CM 4007, they emphasized that the offence of drunkenness under section 97 of the *NDA* targets a broad range of disorderly behaviour owing to the influence of, in this case, alcohol.

[10] In terms of sentencing principles, the prosecution emphasized the fundamental purpose of sentencing outlined at subsection 203.1(1) of the *NDA* and, in the circumstances of this case, the objectives stated at paragraphs 203.1(2)(a)(c to f) and subparagraph (i) are of particular importance. More specifically, denouncing Cpl Christmas' behaviour would address the type of conduct that causes harm to victims along with sending a message to fellow CAF members that such conduct would not be tolerated. The punishment of a significant fine and extra work and drill would acknowledge the failure of Cpl Christmas and promote a sense of responsibility and an acknowledgement of harm done to victims because of her actions.

Defence

[11] In contrast, the defence submits that Cpl Christmas should be sentenced to a fine in the amount of $200. From the defence's perspective, the proposed sentence falls within an appropriate range given the caselaw and would serve to impose the least severe sentence required to maintain discipline, efficiency and morale. The circumstances surrounding the offence, the defence argues, would militate towards a sentence on the lower end of the spectrum. This was an isolated incident; the HMG course was not compromised as a result of Cpl Christmas' behaviour; and there is no victim impact statements or a military impact statement for the Court to consider, suggesting there is no evidence of lasting harm.

[12] In terms of sentencing principles, the defence generally agreed with the prosecution's submission that along with the fundamental purpose of sentencing to maintain the discipline, efficiency and morale of the CAF (*NDA* subsection 203.1(1)), that the objectives of denunciation, deterrence, rehabilitation and reintegration should be considered. Defence counsel also stressed the Court should be mindful of paragraph 203.3(d), a sentence should be the least severe sentence required to maintain the discipline, efficiency and morale of the CAF.

[13] The defence submitted numerous mitigating factors for the Court's consideration. They included: that six years have passed since the incident; this is Cpl Christmas' first offence; that Cpl Christmas apologized to A.H. shortly following the incident; and, that Cpl Christmas has rehabilitated and reintegrated herself back into the

unit since the incident. For example, she has completed a Class C deployment on Operation (Op) LASER along with taking numerous military driving courses; her Military Personnel Record Resume (MPRR) notes nine to ten Class B engagements; and she has maintained her sobriety with no recidivism since the incident.

[14] From the defence's perspective, the objective gravity of this offence is not serious in citing Perron M.J. at subparagraph 13(a) in *R v Near*, 2013 CM 4018 where he states, "section 97 of the *National Defence Act*, drunkenness, is objectively not one of the most serious offences found in the Code of Service Discipline since one can be sentenced to imprisonment for less than two years or to lesser punishment".

Gladue Report

[15] Cpl Christmas is an Indigenous offender. Following the finding on 17 June 2025, counsel were queried if a *Gladue* report would be requested in this case. Counsel submitted they did not see a requirement to order a pre-sentence *Gladue* report as the anticipated submissions on sentence would not envisage a custodial punishment nor a criminal record for the offender. However, in their respective submissions on sentence and limited information available to them, counsel attempted to refer to some *Gladue* factors to demonstrate that the background of the offender was considered (see *R. v. White*, 2024 CM 4002).

[16] For its part, prosecution cited paragraphs 31 to 36 in *Ermine* where Pelletier, M.J. discussed the principle of restraint paying particular attention to the circumstances of an Aboriginal offender as outlined at paragraph 203.3(c.1) of the *NDA*. Prosecution further noted that without a *Gladue* report, there is little information about Cpl Christmas' experience as an Indigenous person and if her misuse of alcohol at the time of the offence was related to any systemic or background factors as noted at paragraph 31 in *Ermine*. From their perspective, as Cpl Christmas is a first-time offender, the principle of restraint is a critical sentencing recommendation. As the prosecution's recommendation to the Court would not involve detention or incarceration nor impose a criminal record upon Cpl Christmas, the sentencing recommendation balances the principle of restraint with the fundamental principles and objectives of sentencing in the military justice system. Defence counsel submitted that while no *Gladue* report is available in this case, *Gladue* is mostly concerned with restraint.

Evidence

[17] The facts revealing the circumstances of the offence were set out fully in the decision delivered orally on 17 June 2025 and the Court provided a summary earlier in this decision.

[18] At the sentencing hearing, the prosecution introduced as exhibits the service records and pay information required in the application of the *Queen's Regulations and Orders for the Canadian Forces* (QR&O) paragraph 112.51(2).

[19] The prosecutor confirmed that he provided a reasonable opportunity for the victim to prepare a victim impact statement. The victim did not complete a victim impact statement. In addition, the prosecutor confirmed that the unit did not submit a military impact statement. The prosecution did not tender any further documentary evidence and did not call any witnesses.

[20] The defence submitted an Agreed Statement of Facts (ASOF). They did not call any witnesses nor submit any additional evidence. At the request of defence counsel and pursuant to section 17 of the *Military Rules of Evidence* (*MRE*) , the Court took judicial notice that Cpl Christmas has been subject to judicial proceedings since 2019.

[21] In addition to this evidence, prosecution and defence counsel made submissions to support their position on sentence based on the facts and considerations relevant to this case, to assist the Court to adequately apply the purposes and principles of sentencing to the circumstances of both the individual offender and the offence committed.

The circumstances of the offender

[22] The Court has reviewed the evidence submitted by defence counsel, particularly an ASOF that states the following:

(a) Cpl Christmas is a twenty-eight-year-old Mi'Kmaw woman;

(b) Cpl Christmas resides in the Eskasoni First Nation community;

(c) leading up to the incident of March 2019 at the Truro Armouries for which she was found guilty of drunkenness pursuant to section 97 of the *NDA*, Cpl Christmas was a heavy drinker;

(d) since being charged with the incidents of March 2019, Cpl Christmas has practiced abstinence with respect to alcohol and maintained her sobriety;

(e) the main drivers behind her path to sobriety include being in a stable four-year relationship with her boyfriend and her enrollment at Cape Breton University where Cpl Christmas has completed three years of a four year undergraduate program; and

(f) Cpl Christmas intends to pursue a Bachelor of Education degree and hopes to become a teacher.

[23] As noted in her MPRR and referenced by defence counsel, since facing charges in 2019, she has continued to serve in the CAF. She has completed numerous CAF courses along with deploying on Op LASER and serving on various Class B engagements.

Analysis

Purpose of sentencing in the military justice system

[24] As noted by the Supreme Court of Canada (SCC) in *R. v. Edwards*, 2024 SCC 15 at paragraph 59 citing an earlier SCC decision in *R. v. Stillman*, 2019 SCC 40, "Canada's separate system of military justice is designed to "foster discipline, efficiency, and morale in the military"". This purpose is codified through section 55 of the *NDA*.

[25] Similarly, the purposes and principles of sentencing in the military justice system differ from that of the civilian justice system as noted at subsection 203.1(1) of the *NDA* that states "the fundamental purpose of sentencing is to maintain the discipline, efficiency and morale of the Canadian Forces."

[26] These fundamental purposes of sentencing are achieved by imposing a just punishment that takes into account one or more of the enumerated objectives outlined at subsection 203.1(2) of the *NDA* that include such things as "to promote a habit of obedience to lawful commands and orders" (paragraph 203.1(2)(a)), "to maintain public trust in the Canadian Forces as a disciplined armed force" (paragraph 203.1(2)(b)), and "to denounce unlawful conduct and the harm done to victims or to the community that is caused by [the] unlawful conduct" (paragraph 203.1(2)(c)), among others.

[27] As noted by Pelletier M.J. in *Ermine*, the fundamental principle of sentencing is proportionality. Section 203.2 of the *NDA* provides that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. The principle of proportionality requires a judge imposing the sentence to balance the gravity of the offence with the degree of responsibility of the offender. Respect for the principle of proportionality requires that the determination of a sentence by a judge, including a military judge, be a highly individualized process.

[28] There are a number of other sentencing principles stated at *NDA* section 203.3 that include: "a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender," (paragraph 203.3(a)); "a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances" (paragraph 203.3(b)); and that "a sentence should be the least severe sentence required to maintain the discipline, efficiency and morale of the Canadian Forces" (paragraph 203.3(d)).

[29] A particular sentencing principle of note in this case is paragraph 203.3(c.1) of the *NDA*, "all available punishments, other than imprisonment and detention, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders"

[30] Military Judges have considered paragraph 203.3(c.1) in previous courts martial (see *R. v. August*, 2022 CM 3014). As noted earlier, counsel have not requested a *Gladue* report. In this case, perhaps due to their respective positions not recommending a custodial sentence or a punishment that would result in a criminal record, prosecution and defence did not offer much information related to the unique circumstances of the offender but only made general submissions regarding *Gladue* factors (see generally *White*).

[31] While no victim impact statements nor a military impact statement was brought to the Court's attention, in considering the sentence, the Court is mindful of *NDA* subsection 203.6(4):

> **(4)** Whether or not a statement has been prepared and filed in accordance with this section, the court martial may consider any other evidence concerning any victim of the offence for the purpose of determining the sentence to be imposed on the offender or determining whether the offender should be discharged absolutely.

[32] Taken globally, I have considered all the factors outlined at Division 7.1 of the *NDA* in coming to my sentencing decision today.

Seriousness of the offence

[33] The Court has considered the objective gravity of the offence in this case. Section 97 of the *NDA* carries a maximum punishment of imprisonment for less than two years or to less punishment. As noted by Perron, M.J. in *Near*, it is objectively lower on the scale of punishments that is directly linked to the requirement of maintaining a disciplined armed force. I adopt the rationale of Gibson, M.J., (as he then was) in *R v Yurczyszyn*, 2014 CM 2005 at paragraph 17 where he stated:

> [17] Offences such as the section 97 offence of drunkenness in this case are aimed to protect and preserve the core values of military discipline. The punishments imposed should emphasize the objectives of general and specific deterrence, as well as denunciation of the unlawful conduct. The sentence given by the court should also be tailored to meet the objectives of rehabilitating offenders and assisting their reintegration into military service, where appropriate.

Sentencing objectives considered in this case

[34] The Court has considered the recommended sentencing objectives put forth by counsel.

[35] In terms of the main purpose of sentencing at section 203.1 of the *NDA*, namely the maintenance of "discipline, efficiency and morale of the Canadian Forces", the sentence proposed must be sufficient to denounce Cpl Christmas' conduct and the harm done to victims and deter other offenders and other persons from committing such offences (see *NDA* paragraphs 203.1(2)(a) to (d)).

[36] At the same time, the sentence must not be so severe as to cause a disproportionate impact on the offender and risk compromising her rehabilitation and reintegrating her back into the unit following the sentence (see *NDA* paragraphs 203.1(e) to (f)). In the circumstances of this case, the primary sentencing objectives are deterrence and denunciation along with rehabilitation and reintegration.

Parity and the sentencing range

[37] Turning now to the parity principle (see *NDA* paragraph 203.3 (b)), the Court examined precedents imposed on similar offenders for similar offences committed in similar circumstances. Sentences imposed by military tribunals in such cases are useful to appreciate the kind of punishment that would be appropriate in this case.

[38] In the context of submissions to demonstrate the proposed sentence was within a range of similar sentences for similar offences, the prosecution and defence counsel brought several cases to my attention. The Court has considered the following cases:

Prosecution

(a) *R. v. Cadieux*, 2019 CM 2019 – Cpl Cadieux was found guilty of two charges: one contrary to *NDA* section 130 (sexual assault contrary to section271 of the *Criminal Code*); and, one charge contrary to *NDA* section97 (drunkenness). The offender and complainant were on exercise outside of Canada. At a unit barbecue towards the end of the exercise, the offender (male) went into the all-female tent where the complainant was sleeping. There was evidence of some kissing and the Court found because the complainant was asleep immediately prior to and during the kissing, they were incapable of consent. The interaction took approximately two to three minutes whereby a MCpl ordered Cpl Cadieux out of the tent. In terms of the drunkenness charge, the Court found that during this time Cpl Cadieux was drunk, tired, slurring his words, stumbling around and not able to walk properly. He later attempted to get into a rental car but the company sergeant major (CSM) took the keys away. Following a contested sentence hearing, the military judge sentenced Cpl Cadieux to sixty days' detention (suspended), a DNA order and a *Sex Offender Information Registration Act* (*SOIRA*) order;

(b) *R. v. Ermine*, 2021 CM 4007 – Pte Ermine pleaded guilty to one charge of drunkenness (*NDA* section 97). Pte Ermine was drinking excessively and without authorization, entered the female section of barracks in a heavily inebriated state. He entered a room occupied by two females. He placed a hand on her thigh, was told to leave and left but returned on multiple occasions. Pte Ermine had no memory of these events. During a contested sentencing hearing, the prosecutor submitted that the offender should be sentenced to a minor punishment of confinement to barracks

for twenty-one days. In contrast, the defence argued that the offender should be given an absolute discharge. The offender was a thirty-one year old First Nations Cree member. Following the incident, the member was arrested and subject to strict conditions. A *Gladue* report was ordered and provided the Court with details related to the background of the offender. After considering counsel's respective submissions, paying particular attention to the circumstances of Pte Ermine as an Aboriginal offender pursuant to *NDA* paragraph 203.3(c.1), the Court sentenced the offender to the minor punishment of confinement to barracks for fifteen days;

(c) *R. v. Goulding*, 2023 CM 2019 – MCpl Goulding was found guilty by a General Court Martial (GCM) of four charges: two charges contrary to *NDA* section130 (section 266 *Criminal Code*); one charge contrary to *NDA* section130 (section 267 *Criminal Code*) and one charge contrary to *NDA* section97. The offender was a cook instructing on a trade qualification course. The offender bought his students a drink at the junior ranks mess to celebrate a sports victory. The offender was drunk and assaulted three students; ranging from throwing a shoe at a student; hitting a student in his private area; and, shaking a student while he was at a urinal. During a contested sentencing hearing, the prosecution suggested the Court should impose a reduction in rank as an appropriate sentence. The defence submitted that a punishment of absolute discharge would be appropriate. After an extensive analysis particular to the case and the circumstances of the offender, the Court sentenced MCpl Goulding to a severe reprimand and a fine in the amount of $4,800 and gave an absolute discharge for three section130 charges; and

(d) *R v. Yurcyszyn*, 2014 CM 2005 – Major (Maj) Yurcyszyn pleaded guilty to one charge of drunkenness (*NDA* section97) and was found guilty of one charge contrary to *NDA* section130 (section 271 *Criminal Code*). Following Remembrance Day ceremonies, the offender attended a party during the evening where he was drunk; he had difficulty standing, slurred his words and was dishevelled in his uniform. He later sexually assaulted the spouse of a CAF colleague by grabbing her arms and kissing her. During a contested sentencing hearing, the prosecution submitted that an appropriate sentence would be reduction in rank. The defence argued that the Court should sentence the offender to a sentence of severe reprimand and a fine. The Court sentenced the offender to a reduction in rank from major to captain.

Defence

[39] For its part, the defence provided the following caselaw:

(a) *R. v. Corporal W.D. Hillier*, 2004 CM 02 – Cpl Hillier pleaded guilty to one charge of drunkenness (*NDA* section97). The Offender, while on leave, entered an unlocked building searching for an automatic teller machine (ATM) and triggered a silent alarm. This was the offender's first offence. The Court sentenced the offender to a fine in the amount of $400;

(b) *R. v. ex-Corporal S.B. Matthews*, 2007 CM 1007 – Ex.-Cpl Matthews pleaded guilty to one charge of drunkenness (*NDA* section97). The offender was drunk at a unit softball game to the point where he had to be removed from the game. He continued drinking, hurling insults at other players. Following the incident, the offender was monitored closely and suspended from playing sports. The Court noted while the conduct tarnished the image of the CAF, Ex-Cpl Matthews was a first time offender and the time elapsed between the commission of the offence and the sentence were mitigating factors. Following a joint submission from counsel, the Court sentenced the offender to a fine in the amount of $200;

(c) *R v Near*, 2013 CM 4018 – Cpl Near pleaded guilty to one charge of drunkenness (*NDA* section 97). Cpl Near was working at the Army Ball. Cpl Near was drinking champagne in uniform and was advised by his supervising corporal he was not permitted to do so. Cpl Near was later observed to be intoxicated. He admitted to drinking. The offender was twenty-eight years old and had been a member of the CAF for six years with no conduct sheet. The Court found the delay in this case was a significant factor. The Court sentenced the offender to a fine in the amount of $200;

(d) *R. v. St-James*, 2019 CM 2001 – Cpl St-James pleaded guilty to one charge of drunkenness (*NDA* section 97). The offender, who attended a CAF broomball tournament, was drinking at a reception and later went to a local bar where he continued drinking. The offender returned to the defence establishment and took a coat not belonging to him. The offender was twenty-six years old and a first-time offender. Following a joint submission, the court sentenced the offender to a fine in the amount of $800 and a restitution order to reimburse the value of the coat ($360) to its owner; and

(e) *R v Valcour*, 2013 CM 3027 – Cpl Valcour pleaded guilty to one charge of drunkenness (*NDA* section 97). While on duty at the Army Ball, the offender got drunk. On joint submission, the Court considered numerous factors including the offender's conduct while on duty, the guilty plea, his age and that the incident was out of character. The Court sentenced the offender to a fine in the amount of $200.

[40] As this is a contested sentencing hearing, it is not surprising that the caselaw offered from the prosecution and defence in supporting their respective positions are different. The prosecution did its best to present the court similar cases where the sentence was contested. However, the challenging position that the Court is placed in is to determine if there are other cases to be considered when taking into account the parity principle noted earlier. To that end, along with the cases cited by counsel, the Court has considered the following cases:

(a) *R. v. Crocker*, 2015 CM 2014 – Cpl Crocker pleaded guilty to one charge of drunkenness while he was deployed on Op REASSURANCE. On joint submission, he was sentenced to a punishment of a reprimand and a fine in the amount of $1,500;

(b) *R. v. White*, 2018 CM 4021 – Second lieutenant (2Lt) White pleaded guilty to one charge of drunkenness. 2Lt White was drunk at a duty function, made inappropriate comments of a sexual nature and struck a warrant officer. She did not recall her comments nor her behaviour. On joint submission to the Court, she was sentenced to a fine in the amount of $850;

(c) *R. v. Nixdorf*, 2023 CM 3003 – Trooper Nixdorf pleaded guilty to one charge of drunkenness. He was drunk at the junior ranks mess, obtained a bottle of bear spray from his vehicle and attempted to drive away in his jeep. He pointed the bear spray at a CAF member. On joint submission to the Court, he was sentenced to a fine in the amount of $300 and fourteen days' extra work and drill;

(d) *R. v. Gosse*, 2024 CM 3017 – MWO Gosse pleaded guilty to one charge of drunkenness. While deployed on Op CALUMET as the camp Company Sergeant Major (CSM), he was drunk on several occasions and acted inappropriately. On joint submission to the Court, he was sentenced to a severe reprimand and fine in the amount of $1,000;

(e) *R v Tremblay*, 2013 CM 4031 – Maj Tremblay pleaded guilty to one charge of drunkenness. He was at a troop lunch, became intoxicated and made inappropriate comments to a civilian and placed a hand on her thigh. Following a contested sentencing hearing, Maj Tremblay was sentenced to a reprimand and a fine in the amount of $1,000; and

(f) *R. v. Corporal A.M. Clark*, 2009 CM 1009– Cpl Clark pleaded guilty to one charge of drunkenness. While on deployment in Afghanistan, Cpl Clark was drunk, drove a Hummer and crashed into two weather tents, endangering the life of persons in a theatre of operations. On joint submission to the Court, Cpl Clark was sentenced to a reprimand and a fine in the amount of $2,000.

Aggravating and mitigating factors

[41] The circumstances of the offence reveal the following aggravating factors:

(a) the offence took place within the context of a training exercise. The Court agrees with the prosecution that while the course members were authorized to have a "free evening" on the Saturday leading to the incident giving rise to the charges; a member of Cpl Christmas' rank and experience should have known better than to get intoxicated knowing she had to return to the armoury and that training on HMG would commence the following morning; and

(b) her behaviour was very disturbing to A.H and disruptive to Pte Ashford. The Court adopts the rationale of my colleague Pelletier, M.J. at paragraph 25 of *Ermine* where he stated "sleeping quarters are placed where occupants should feel protected [. . .]it is the only place they can truly call their own. Violations of the sanctity of that space need to be addressed." In the circumstances of this case, a drunken and belligerent Cpl Christmas awoke seventeen-year-old A.H; then later awoke Pte Ashford. While no victim impact statement was filed with the Court, this was undoubtedly unsettling for both members.

[42] That said, the Court acknowledges the following mitigating factors:

(a) the absence of a criminal record and conduct sheet revealing precedents of similar misbehaviour;

(b) as noted in defence counsel's submission and apparent in Cpl Christmas' Military Personnel Record Resume (MPRR), despite facing serious charges since 2019, she has continued to serve in the CAF, successfully completing courses such as: the Army Driver Wheeled Common course; the Standard Military Pattern trailer operator Course, the Militarized Commercial-Off-The-Shelf driver course, the Automatic Grenade Launcher Systems course; and importantly, the HMG course in 2023. She has served in support of Op LASER and also on Class B engagements numerous times;

(c) her age and career potential as a member of the CAF. Evidence presented outlines that Cpl Christmas has potential to contribute in a positive way to the CAF in the future;

(d) the personal impact upon Cpl Christmas in having this matter before the courts since 2019. The Court is not opining on *Jordan* related delay but concurs with defence counsel that pending charges over six years have caused Cpl Christmas stress and anxiety; and

(e) as outlined in the ASOF, she has maintained her sobriety since 2019.

Is extra work and drill an appropriate punishment in this case?

[43] My colleague Pelletier, M.J., in *R. v. Crouter*, 2022 CM 4007 at paragraph 27 outlined that the punishment of extra work and drill performed in accordance with the conditions expressed at QR&O 108.35 is a punishment meant "to meet the objectives of denunciation and deterrence, without having a lasting effect detrimental to [the] rehabilitation of the offender".

[44] The Court echoes the comments of Isenor, M.J., in *R. v. Harper*, 2025 CM 6004 at paragraph 40 where she stated, "the punishment of extra work and drill is intended to re-instil discipline in the offender, and therefore is intended to be completed in addition to the offender's normal work load, and not instead of the offender completing their normal work load."

[45] The prosecution cited *Ermine* as support for its sentencing submission of a minor punishment of extra work and drill. That case has significant similarities to one before the Court today. Pte Ermine was an Indigenous offender and pleaded guilty to one charge of drunkenness. He accessed without authorization the female section of a barracks in a heavily inebriated state, entering a room occupied by two female colleagues as they were sleeping. He sat on the bed and placed a hand on a colleagues' thigh. He was told to leave but returned on many occasions. Pte Ermine had no memory of these events.

[46] In sentencing the offender to the minor punishment of confinement to barracks for a period of fifteen days, Pelletier, M.J. determined that the punishment was appropriate in the circumstances of the misconduct in that case. The Court notes that Judge Pelletier, at paragraph 36 of that decision, concluded that the "proper recognition of the Aboriginal status of Private Ermine does not rule out the possibility of imposing the punishment of confinement to barracks."

[47] As opposed to this case, Military Judge Pelletier had the benefit of a *Gladue* report, that provided the military judge with some important background information on sentence; even considering the sentencing recommendations from counsel ranged from the minor punishment of confinement to barracks to an absolute discharge. As Judge Pelletier stated at paragraph 31 of *Ermine*, "[i]n sentencing an Aboriginal offender, a judge must consider the unique systemic or background factors which may have played a part in bringing the particular Aboriginal offender before the courts." While counsel generally referred to *Gladue* factors during their respective submissions, the lack of a report understandably made this issue challenging.

[48] Regardless, considering the circumstances of this case and the offender, the Court does not believe that the minor punishment of extra work and drill is most likely to contribute to the maintenance of discipline, efficiency and morale in the CAF. Comparing the punishment imposed in *Ermine*, the circumstances before the Court that

led to the *NDA* section 97 conviction in this case were approximately six years ago. Since that time, Cpl Christmas has continued to serve in the CAF, remained sober, completed several military courses, served on Op LASER, completed Class B duty numerous times and has no disciplinary issues noted on her conduct sheet. Gleaning the rationale from Military Judge Isenor in the *Harper* decision, I take the view that it is not necessary to sentence the offender to a minor punishment of extra work and drill with a view to "re instil discipline".

What is the appropriate fine?

[49] Both counsel have recommended a punishment of a fine, that is higher on the scale of punishments than minor punishments (see *NDA* paragraph 139(1)(k)); however, there is a significant discrepancy between their respective positions. Prosecution is recommending a fine in the amount of $2,500, while defence is recommending a fine in the amount of $200.

[50] The Court generally concurs with the prosecution's view that in the circumstances of this case, the fine should be meaningful and, most importantly, proportional to the gravity of the offence and the degree of responsibility of the offender. As noted by the prosecution, the Court adopts the rationale of Sukstorf, M.J. at paragraph 125 of the *Goulding* decision:

> [125] Further, the imposition of a significant fine as a punishment serves as a powerful deterrent. The prospect of substantial financial consequences operates as a compelling disincentive, dissuading individuals from engaging in such drunken behaviour. Unlike other forms of punishment, a substantial fine will directly impact MCpl Goulding creating a tangible and immediate consequence for his conduct. I must impose a fine that discourages this type of misconduct but also sends a clear message to the broader community about the severity of repercussions for violating established norms.

[51] While the Court concurs with Military Judge Sukstorf's rationale, the recommendation of a significant fine in the amount of $2,500 with substantial financial consequences is not appropriate in this case. As cited by Military Judge Sukstorf in paragraph 76 of that decision where she stated "[e]very case will turn on its own facts." The case cited by the prosecution of MCpl Goulding where the offender received a punishment of a severe reprimand and fine in the amount of $4,800 can be distinguished on the facts of that case. The offender was found guilty of four charges including assault and assault causing bodily harm. MCpl Goulding was in a leadership position where he indulged in drinking in the presence of his students and eroded the trust that exists between those in a leadership position and subordinates.

[52] The other cases cited by the prosecution do not include any fines as punishment. Additional cases noted by the Court for sentencing for a single charge of drunkenness listed fines (among other punishments) from $300 to $2,000; with the two highest fines of $1,500 and $2,000 addressing conduct on deployed operations.

[53] On the contrary, based on the particular facts of this case, caselaw cited by the defence appear on the lower end of the spectrum. The Court notes the case of *Hillier*,

where a corporal triggered a building alarm, was a first-time offender and on joint submission was sentenced to a fine in the amount of $400. The circumstances in this case are more serious. In contrast, the case of *White* dealt with an officer who was drunk at a unit function, made inappropriate comments and struck a warrant officer. Like Cpl Christmas, she did not remember the incident. 2Lt White was sentenced to a fine in the amount of $850. In the case of *Tremblay*, following a contested sentencing hearing, the offender was given a reprimand and a fine in the amount of $1,000 after pleading guilty to one charge of drunkenness. Maj Tremblay was the deputy commanding officer of a reserve force unit, was drunk at a unit function and sexually harassed a civilian along with making inappropriate physical contact with her.

[54] In the Court's view, having heard the submissions of counsel, taking into account the purposes and principles of sentencing at Division 7.1 of the *NDA* and reviewing the applicable caselaw, the appropriate punishment that is "proportional to the gravity of the offence and the degree of responsibility of the offender" lies between the respective submissions of the prosecution and defence. As I noted earlier, the absence of a *Gladue* report offers a significant challenge to determine if the compatibility of the punishment of a fine with the Indigenous status of Cpl Christmas is in accordance with *NDA* paragraph 203.3(c.1). Counsel have provided the Court some general considerations related to the *Gladue* factors, and the Court has considered them in imposing the sentence.

[55] To that end, a punishment of a fine in the amount of $500 denounces her conduct and sends a message to Cpl Christmas and serving members that engaging in similar conduct will have consequences. In the Court's view, this punishment is of the minimum severity necessary to maintain discipline, efficiency and morale, paying particular attention to *NDA* paragraph 203.3(c.1). This punishment would also recognize the efforts of Cpl Christmas over the past number of years regarding her rehabilitation and reintegration within the unit. I am confident that the sentence the Court has selected is within the range of sentences imposed for similar cases in the past and that considering the circumstances of this case, it is warranted.

[56] Cpl Christmas, your disorderly behaviour was very disruptive to fellow CAF members attending the HMG course. Your actions invaded the personal space of the sleeping area of two CAF teammates. Due to your drunkenness, you awoke one member and were belligerent and difficult to control. You then awoke another member junior in rank to you and got into their cot; forcing that member to find alternative sleeping arrangements. All of this occurred in the early morning hours just prior to training with heavy machine guns later that day. Suffice to say, this is not the behaviour expected of a corporal in the CAF. That said, you have demonstrated significant progress in the six years following the incident. I am confident that you have learned from this incident and will continue with your service in the CAF. Good luck.

FOR THESE REASONS, THE COURT:

[57] **SENTENCES** Cpl Christmas to a fine in the amount of $500, payable immediately. Should they be released from the CAF before the fine is fully paid, the balance would be payable in full upon release.

Counsel:

The Director of Military Prosecutions as represented by Lieutenant-Commander J.M. Besner, Major M.D. Ferron, Lieutenant(N) E. Carley and Lieutenant(N) A. Keaveny

Lieutenant-Colonel A.H. Bolik and Major C.M. Da Cruz, Defence Counsel Services, Counsel for Corporal K.L. Christmas